

Homeland Security Department

3009.171-4

3009.171 Prohibition on Federal Protective Service guard services contracts with business concerns owned, controlled, or operated by an individual convicted of a felony.

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[74 FR 58856, Nov. 16, 2009]

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[74 FR 58856, Nov. 16, 2009]

3009.171-1 General.

Except as provided in (HSAR) 48 CFR 3009.171-6 and 3009.171-7, Department of Homeland Security (DHS) contracting officers shall not enter into a contract for guard services under the Federal Protective Service (FPS) guard services program with any business concern owned, controlled, or operated by an individual convicted of a serious felony.

[74 FR 58856, Nov. 16, 2009]

3009.171-2 Definitions.

As used in this subpart—

Business concern means a commercial enterprise and the people who constitute it.

Felony means an offense which, if committed by a natural person, is punishable by death or imprisonment for a term exceeding one year.

Convicted of a felony means any conviction of a felony in violation of state or federal criminal statutes, including the Uniform Code of Military Justice, whether entered on a verdict or plea, including a plea of *nolo contendere*, for which a sentence has been imposed.

Individual means any person, corporation, partnership, or other entity with a legally independent status.

[74 FR 58856, Nov. 16, 2009]

3009.171-3 Determination of eligibility for award of FPS guard service contracts.

(a) Contracting officers shall make a determination of eligibility for award of FPS guard service contracts upon identification of the apparent successful offeror as a result of a solicitation for offers.

(b) Contractors shall be required to immediately notify the contracting officer in writing upon any felony conviction of personnel who own, control or operate a business concern as defined in (HSAR) 48 CFR 3009.171-4 at any time during the duration of an Indefinite Delivery/Indefinite Quantity Contract, Blanket Purchase Agreements, or other contractual instrument that may result in the issuance of task orders or calls, or exercise of an option or options to extend the term of a contract. Upon notification of a felony conviction, the contracting officer shall review and make a new determination of eligibility prior to the issuance of any task order, call or exercise of an option.

[74 FR 58856, Nov. 16, 2009]

3009.171-4 Determination of ownership, control, or operation.

(a) Whether an individual owns, controls, or operates a business concern is determined on the specific facts of the case, with reference to the factors identified in paragraphs (b) and (c) of this subsection. Prior to contract award, such individual must provide any additional documentation to the contracting officer upon the contracting officer's request for the agency's use in determining ownership, control, or operation. The refusal to provide or to timely provide such documentation may serve as grounds for the contracting officer to refuse making contract award to the business concern.

(b) Any financial, voting, operational, or employment interest in the business concern of a spouse, child, or other family member of, or person